IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/07/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.19312 of 2003
and W.P.Nos.19375, 19387 and 19774 of 2003

T.Uttamchan
Prop: Jain Garments
10, Whites Road
Chennai-14. .. Petitioner in
WP:19312/2003

Sign Sites Publicities
rep. by Prop: Mr.Abdul Hassan
10, Whites Road
Chennai-14. .. Petitioner in
WP:19375/2003

K.Srinivasan
Proprietor, Chennai Express
10, Whites Road
Royapettah, Chennai-14. .. Petitioner in
WP:19387/2003

-Vs-

1. Union of India
rep. by Competent Authority
SAFEM (FOP) AND NDPS Acts
64/1, G.N.Chetty Road
Chennai-17. .. 1st Respondent
in all W.Ps.

2. J.Akbar Ali .. 2nd Respondent
in W.Ps.19312,
19375 & 19387/03
3. Inspecting Officer
SAFEM (FOP) AND NDPS Acts
64/1, G.N.Chetty Road
T.Nagar, Chennai-17. .. 2nd Respondent
in WP.19774/2003

PRAYER in W.P.Nos:19312, 19375 and 19774/2003 : Petitions under Article 226 of the Constitution of India for issue of writ of Certiorarified Mandamus as

stated therein.

PRAYER in W.P.No.19387 of 2003: Petition under Article 226 of the Constitution of India for issue of writ of Mandamus as stated therein.

For Petitioners : Mr.P.B.Ramanujam
in WP:19312 and
19375 of 2003

For Petitioner
in WP:19387/2003 : Mr.A.R.Shamsudeen

For Petitioner
in WP:19774/2003 : Mr.S.J.Jagadev

For Respondents : Mr.K.Kumar, ACGSC

:ORDER

The petitioners in these writ petitions are tenants in the property situated at New No.10, (Old No.12), Whites Road, Chennai-60 014. It is not in dispute that the property belongs to one Smt.Badrul Arifa, wife of S.A.Jawersha, who had suffered dete n under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. The properties of the said S.A.Jawersha as well as the property which stood in the name of his wife Smt.Badrul Arifa were forfeited pursuant to the forfeiture notice in File No.OCA/ MDS/209/76, dated 31.8.1976 invoking Section 6 of the Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976 (for brevity the "Act").

2. Admittedly, there is no complaint against the procedure followed by the respondents under Sections 6 and 7 of the Act for forfeiting the said properties either by the petitioners herein or by the said S.A.Jawersha or his wife Smt.Badrul Arifa. Even though, the said S.A. Jawersha and his wife Smt.Badrul Arifa challenged the orders of the competent authority forfeiting the said properties, which was confirmed by the Appellate Tribunal of Forfeited Properties in W.P.Nos.2016 and 2017 of 2000 respectively, the said writ petitions were dismissed by this Court by an order dated 7.2.2000, which was subsequently confirmed by the Division Bench of this Court by order dated 13.12.2000 in W.A.Nos.2184 and 2183 of 2000 filed by S.A.Jawersha and Smt.Badrul Arifa, respectively. The Division Bench, while dismissing the above appeals held as under:
"... 2. It is alleged that the appellants are husband and wife. A notice under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the Act) was issued to the appellants on 31.9.1976. The appellants have filed their reply, and the competent authority vide his order dated 29.11.1995, under Section 7(1) of the Act directed confiscation of the appellants properties. Against the order appellants preferred appeal before the 1st respondent in the year

1996. In July, 1999 they filed application for adducing additional evidence, which was rejected by the Tribunal stating that it was filed belatedly, and that it would not advance the case of the appellants. Challenging that order, appellants filed writ petitions. The learned Single Judge, on consideration, dismissed the writ petitions holding that the rejection to allow such evidence after 23 years cannot be said to be unreasonable. Aggrieved against that order, appellants have filed these writ appeals.

3. We have heard the learned counsel, and perused the materials on record. Generally, this Court is lenient in giving opportunity to adduce additional evidence, provided sufficient cause has been shown. In the instant case, the notice under Section 6(1) of the Act was issued on 31.9.1976. Admittedly, the documents were not filed at the relevant point of time. When the notice was issued. It was sought to be filed only after an inordinate delay of 23 years. No cogent reason was given for not producing the documents. The Tribunal has rejected, the only reason given by the appellants, they they were produced on legal advice. The learned Single judge has also found that it cannot be considered to be a reasonable ground to allow additional evidence. In any view of the matter, we find no error or illegality in the order of the Tribunal, as well as in that of the learned Single Judge, so as to call for any interference. Accordingly, these writ appeals are dismissed."

4. Even though notice under Section 19(1) of the Act to take possession of the said forfeited property was given by the competent authority as early as 8.10.1999, the competent authority could not take possession of the property in view of the constant stalemate created by the said S.A.Jawersha and Smt.Badrul Arifa, by filing writ petitions and writ appeals referred to above.

5. Under such circumstances, after the disposal of the writ petitions and the writ appeals, by order dated 7.7.2003, the first respondent proposed to take possession of the impugned property. Hence, the petitioners who are tenants in the impugned property forfeited have challenged the said notice issued under Section 19(1) read with Section 19(2) of the Act.

6. The core contention of the learned counsel for the petitioners is that the petitioners being tenants should have also been given a notice under Section 6 of the Act.

7. In this regard, it is apt to refer Section 6 of the Act which contemplates a notice of forfeiture:

"Section 6: Notice of forfeiture: (1) If, having regard to the value of the properties held by any person to whom this Act applies either by himself or through any other person on his behalf, his known sources of income, earnings or assets,and any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a

notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of this income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.
(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person."

8. A bare reading of Section 6 of the Act makes it clear that the same is intended to be served on the offenders and the persons who acquired the properties illegally. Concededly, the petitioners neither claim to be offenders or persons who acquired the properties illegally. On the other hand, it is the admitted case of the petitioners that even though the impugned property was forfeited pursuant to the forfeiture notice dated 31.8.1976, they became tenants only on 24.4.1996, 1.5.2002, 20.4.1993 and 26.4.1993 respectively. Hence, in my considered opinion, the petitioners are not entitled for the notice under Section 6 of the Act.

9. On the other hand, Section 19 of the Act is intended to give notice before taking possession of the property forfeited by the competent authority giving thirty days time from the service of the order made under Section 19(1) of the Act and the same shall be served on the person affected as well as any other person who may be in possession of the property. The words "as well as any other person who may be in possession of the property" are not found in Section 6 of the Act, which provides for the notice of forfeiture. When the legislature have made a clear distinction in this regard dispensing with any notice of forfeiture under Section 6 of the Act to the person in possession of the property and having not contemplated such notice of forfeiture under Section 6(1) of the Act to the person in possession of the property before passing the impugned order under Section 19(1) of the Act, it may not be proper to hold that the impugned orders under Sections 19(1) read with Section 19(2) of the Act are bad for want of notice under Section 6 of the Act to the petitioners, inasmuch as the petitioners are not entitled to the same.

10. That apart, the object of the legislature in enacting the Act is to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto, and its intention for effective prevention of smuggling activities and foreign exchange manipulations which are having deleterious effect on the national economy, cannot be lightly disregarded.

11. As observed by the Division Bench of this Court in the order dated 13.12.2000 in W.A.Nos.2184 and 2183 of 2000, the execution of forfeiture which was initiated as early as 31.8.1976 has been delayed at the instance of S.A.Jawersha and Smt.Badrul Arifa for nearly about 26 years under some pretext or other.

12. It is trite law that in the matter which is concerned with the national economy, the Court should be very slow in entertaining the pleas that would defeat the very object and intention of the legislature. However, taking note of the fact that Section 19 of the Act provides for thirty days notice in giving effect to the order of taking possession and since the fact remains that the petitioners have been served the notice under Section 19(1) read with Section 19(2) of the Act only on 7.7.2003, except to give thirty days time from the date of service of the order which expires on 6.8.2003 and thereafter to permit the respondent to take appropriate action provided under Section 19(2) of the Act to take possession of the property forfeited by use of such forces as may be necessary, no further orders are required in these writ petitions.

In the result, these writ petitions are disposed of with above observation. No costs. Consequently, W.P.M.P.Nos.24187, 24188, 24122, 24 123, 24199, and 24723 are closed.

Index :Yes
Internet:Yes

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To:

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2. Inspecting Officer
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